

AN ACT

To provide for the admeasurement of dower.

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin:

Petition for dower.

SECTION 1. That any widow who shall not have had her dower assigned to her, within forty days after the decease of her husband, may apply by petition to the judge of probate of the county in which the lands subject to dower lie. Such petition shall specify the lands in which the widow claims dower, and a copy thereof, with a notice of the time and place when the same will be presented shall be served at least ten days previous to its presentation upon the parties interested, or their guardians, where any such parties are minors.

Notice to be given.

Notice how served.

SEC. 2. Such notice may be served personally upon the parties or the guardian of minors in the manner required for the service of process in the district courts, and if any of the parties are non-resident or cannot be found in the territory, service shall be made by publishing such notice for six successive weeks in some newspaper printed in the county, or if there be none, then in some newspaper at the seat of government.

When guardians to be appointed.

SEC. 3. When any of the parties are minors, and have no guardian, the judge of probate, on application of the widow, shall appoint some competent person, a guardian of such minors, for the sole purpose of appearing for, and taking care of their interest in such proceedings, and upon such guardian notice of the application for the admeasurement of dower, and all subsequent notices shall be served, whether said minors reside in the territory or not.

Admeasurement of dower how made.

SEC. 4. Upon such application being made, and proof of service, the judge of probate shall, upon the hearing of the parties, order that admeasurement be made of such widow's

dower of all the lands of her husband specified in such petition, and shall thereupon appoint three reputable freeholders, commissioners for the purpose of making such admeasure-<sup>Commission-
ers to set off
dower.</sup>ment, by an order which shall specify the lands, and the time when the commissioners shall report. And such commissioners before entering upon their duties, shall be sworn before some person authorized to take affidavits, that they will honestly and impartially discharge the duties and execute the trust reposed in them.

SEC. 5. If any of the commissioners so appointed shall die, resign, or neglect to serve, others may be appointed in their places.

SEC. 6. The commissioners shall admeasure and lay off<sup>Dower how
set off.</sup> as speedily as possible, one-third part of the lands embraced in the order of their appointment, or what shall be deemed equal to one-third in value of such lands, when the same shall consist of more than one parcel, as the dower of such widow, designating the same by metes and bounds. They shall take into view any permanent improvements made upon the lands by any heir, guardian or other owner, since the death of the husband, or since the alienation thereof by such husband, and if practicable shall award such improvements within that part of the lands not allotted to such widow, and if not practicable so to award the same, they shall make a deduction from the lands allotted to such widow proportionate to the benefit she will derive from such part of the said improvement as shall be included in the portion assigned to her. They shall make a full and ample report of their proceedings, with the quality, courses and distances of the land<sup>Report when
made.</sup> admeasured and allotted by them to the widow at the time specified in the order of appointment: *Provided*, That the time for making such report may be enlarged, and the judge, by order, may compel such report, or discharge the commissioners neglecting to make the same, and appoint others in their places.

SEC. 7. Such report shall be filed, and entered at large in<sup>Report may
be set aside or
confirmed.</sup> a book to be provided for that purpose, and the judge may on good cause shown set aside said report, and appoint as often

as may be necessary new commissioners, who shall proceed in the manner herein directed; and if said report is not set aside, the judge by order shall confirm the same.

Admeasurement of dower, when final. SEC. 8. The admeasurement so made and confirmed shall at the expiration of thirty days from the date of such confirmation, unless appealed from, be binding and conclusive as to the location and extent of the widow's right of dower, on the parties who applied for the same, and on all parties to whom notice shall have been given as herein required; but no person shall be precluded from controverting the right and title of such widow to the dower so admeasured.

When widow to have possession. SEC. 9. The widow to whom such dower shall be admeasured, at the expiration of thirty days from the date of such confirmation, unless the same be appealed from, may bring and maintain an action of ejectment to recover the possession of the land so admeasured to her, for her dower, in which her right to such dower may be controverted, and upon recovery may hold the same during her natural life, subject to the payment of all taxes and charges accruing thereon subsequent to her taking possession of the same.

When dower assigned of rents and profits. SEC. 10. When the estate out of which dower is to be assigned consists of a mill or other tenement which cannot be divided without damage to the whole, and in all cases in which the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the owners of the estate.

Appeals when and how taken. SEC. 11. Within thirty days after the order of confirmation, any party interested who shall feel aggrieved by such order may appeal to the district court of the proper county, by filing with the judge of probate a petition setting forth the objections to such report, and by executing to the opposite party a bond with such sureties and in such sum as the judge shall direct, conditioned to prosecute such appeal to effect, and to pay all costs that may be awarded against such appellant.

Transcript to be made when appeal taken. SEC. 12. On such appeal being taken, it shall be the duty of the judge of probate, on his fees therefor being paid, to

transcribe all the papers in the proceeding, and to transmit the same to the district court, and the said court shall proceed to hear and determine the same and shall do therein what shall be just.

SEC. 13. In case of the reversal of the order of confirmation, the district court shall cause the same to be certified to the judge of probate making the same, to the end that new commissioners may be appointed, or a new admeasurement had, as the said court shall direct; and in case of the affirmance of the same, the original order of confirmation and the admeasurement thereby confirmed shall be binding and conclusive and authorize an action of ejectment as hereinbefore specified. Duty of district court.

SEC. 14. When service shall be made by publication as herein required, it shall not be necessary to publish the petition, nor a description of the lands, but merely the names of the parties, the town and county in which the lands lie, the nature and object of the application, and the time and place when the same will be presented. Notice by publication, what to contain.

SEC. 15. This act shall take effect from and after its passage.

WILLIAM SHEW,
Speaker of the House of Representatives.
MASON C. DARLING,
President of the Council.

APPROVED, January 18th, 1847.

HENRY DODGE.